

1. Did the ALJ exceed his jurisdiction in awarding penalties?

2. Does the Board have jurisdiction to consider respondent's appeal of the ALJ's Order of August 29, 2006, his Order of October 24, 2006, and/or his October 25, 2006 Nunc Pro Tunc Order?
3. Is the Order of October 15, 2007, a new order for new or additional penalties from which an appeal may be taken?

FINDINGS OF FACT

After reviewing the record compiled to date, the Board concludes the Order should remain in full force and effect, and respondent's appeal should be dismissed. On August 29, 2006, the ALJ ordered respondent's counsel to secure medical records and bills, send copies to claimant's counsel and pay the bills within 20 days of receipt. The bills were not paid. Therefore, the ALJ issued an Order on October 24, 2006, finding several bills, which should have been paid, remained unpaid. The Order listed the bills as follows:

Wichita Surgical Specialists	\$ 16,840.00
Wichita Radiological Group	\$ 2,122.00
Via Christi St. Francis Hospital	<u>\$100,317.44</u>
 TOTAL	 \$119,279.44

The Order awarded penalties in the amount of 10 percent of the unpaid bills, or \$11,927.94, and ordered that penalty to be paid forthwith. That Order was clarified in a Nunc Pro Tunc Order of October 25, 2006, which merely corrected the October 24, 2006 Order to reflect "authorized" medical treatment rather than "unauthorized" medical treatment. Neither the original Order nor the Nunc Pro Tunc Order were appealed.

Due to respondent's failure to pay the ordered amounts, claimant filed a Motion seeking that respondent be held in contempt. Claimant's Motion was heard on October 15, 2007. At that time, the ALJ denied claimant's Motion, but, instead, issued the Order in question dated October 15, 2007. As noted above, the Order does not order new or additional penalties. It just notes the amounts previously ordered and states "[t]his amount is ordered paid forthwith." Respondent timely filed an appeal from that Order. In its Brief to the Board, respondent argues the merits of the original penalties Order from October 2006.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 44-555c grants the Board the jurisdiction to review questions of fact and law as presented to and determined by an administrative law judge. The Board is not granted original jurisdiction over workers compensation issues, but is limited to considering issues on appeal from administrative law judge decisions.

K.S.A. 2006 Supp. 44-551(i)(1) states:

Administrative law judges shall have power to administer oaths, certify official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents and records to the same extent as is conferred on the district courts of this state, and may conduct an investigation, inquiry or hearing on all matters before the administrative law judges. **All final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days.** Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation. Review by the board shall be a prerequisite to judicial review as provided for in K.S.A. 44-556 and amendments thereto. On any such review, the board shall have authority to grant or refuse compensation, or to increase or diminish any award of compensation or to remand any matter to the administrative law judge for further proceedings. The orders of the board under this subsection shall be issued within 30 days from the date arguments were presented by the parties.¹ (Emphasis added.)

The Order of the ALJ from October 15, 2007, did not exceed the jurisdiction of the ALJ. It is merely an Order that restates what had already, one year earlier, been ordered. The time for appeal of the penalties order would have begun from the issuance of the original Nunc Pro Tunc Order of October 25, 2006. Respondent's failure to appeal that Order and Nunc Pro Tunc Order is fatal to its request for Board review. Therefore, the request for review of the Order of October 15, 2007, is denied and the Order of the ALJ remains in full force and effect.

CONCLUSIONS

Respondent's appeal of the Nunc Pro Tunc Order for penalties from October 25, 2006, is untimely. The Order of October 15, 2007, is not an Order from which an appeal of the original penalties Order may be taken.

¹ K.S.A. 2006 Supp. 44-551(i)(1).

DECISION

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated October 15, 2007, remains in full force and effect and respondent's appeal should be, and is hereby, denied.

IT IS SO ORDERED.

Dated this ____ day of March, 2008.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: J. Shawn Elliott, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge